

Briefing Note: Statutory Requirements and Consequences of Non-Engagement in Health Scrutiny

This briefing note provides a detailed overview of the statutory requirements governing how NHS bodies and health service providers must engage with local authority health scrutiny in England, along with the consequences of non-engagement.

1. Duty to Provide Information to Scrutiny

NHS commissioners and providers are legally required to supply information requested by the local authority health scrutiny function under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, as amended by the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny (Amendment and Saving Provision) Regulations 2024, issued under the National Health Service Act 2006. Timely disclosure ensures scrutiny can evaluate safety, quality, effectiveness, and service performance.

2. Duty to Attend and Respond

NHS organisations must attend committee meetings when formally requested and must issue written responses to scrutiny recommendations within the required timeframe of 28 days. Attendance enables effective challenge and accountability.

3. Duty to Consult on Substantial Variations

Any substantial development or variation in the provision of NHS services must be subject to formal consultation with the scrutiny function. Scrutiny may request information, seek assurances, and offer recommendations to improve decision-making and safeguard the public interest.

4. What counts as a “substantial variation or change”

Whilst there is no legal definition the following would generally be considered a “substantial change” where a proposal:

1. Significantly alters how services are delivered to the public (e.g. moving or consolidating services, changing operating hours, changing models of care).
2. Affects the range of services available in a meaningful way.
3. Impacts a large population, vulnerable groups, or whole pathways of care.

4. Creates considerable change in patient access, including travel times or availability.
5. Impacts safety or continuity of frontline services.

(Note: These principles mirror the thresholds used for reconfiguration notifications.)

✓ Examples likely to be “substantial”

- Closing or relocating an A&E, maternity, or community hospital.
- Significant bed reductions.
- Service consolidation across trusts.
- Long-term or permanent removal of services.
- Major pathway redesign that changes where or how patients access care.

X Changes generally *not* considered substantial

- Minor operational or administrative changes.
- Temporary changes due to safety concerns (with clear intent to revert).
- Internal service management changes that do not materially affect patients.

5. Power of Referral to the Secretary of State

If scrutiny is not satisfied with the consultation, evidence base, or anticipated impact of major service changes, it retains the authority to refer the matter to the Secretary of State for Health and Social Care, triggering independent review mechanisms.

6. Duty to Support Transparency

Scrutiny should operate in an open forum with public attendance and the ability to record and share proceedings. NHS bodies must support these transparency obligations to reinforce public confidence.

7. Continuous Engagement Duty

Statutory guidance requires ongoing and early engagement between NHS bodies and scrutiny, particularly during planning stages for service redesign. Effective engagement promotes system-wide collaboration and reduces risk.

8. Interaction with Public Health Duties

Public health services commissioned by local authorities also fall within scrutiny's remit. Providers must cooperate to support scrutiny's oversight role in population health, inequalities, prevention and early intervention.

9. Consequences of Non-Engagement by Health Bodies

- Escalation through formal scrutiny powers, including issuing public reports highlighting non-compliance.
- Referral to the Secretary of State, delaying proposed changes and potentially triggering external review.
- Damage to organisational reputation due to perceived lack of accountability or openness.
- Increased regulatory or ministerial attention where governance or transparency concerns are identified.
- Potential disruption to planned service changes if scrutiny concludes that non-engagement undermines public assurance or safety.
- Strained relationships across the Integrated Care System, reducing effectiveness of partnership working and complicating future service planning.

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